

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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IN RE PAYMENT CARD
INTERCHANGE FEE AND
MERCHANT DISCOUNT
ANTITRUST LITIGATION

ORDER
MD 05-1720 (JG) (JO)

This document refers to: ALL ACTIONS
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JAMES ORENSTEIN, Magistrate Judge:

In three recent submissions, the plaintiffs move for various forms of relief by means of a motion on notice pursuant to this court's Local Civil Rule 6.1. *See* Docket Entry ("DE") 771 (Plaintiffs' Notice of Motion and Motion to Compel Defendant First National Bank of Omaha to Produce Certain Documents); DE 776 (Plaintiffs' Notice of Motion and Motion to Declare as Not Privileged Certain Documents); DE 777 (Plaintiffs' Notice of Motion and Motion to Declare as Not Privileged Certain Documents). In each instance, the plaintiffs sought such relief without first requesting a pre-motion conference pursuant to Rule III.A.3 of my individual practice requirements.

At a conference on July 17, 2007, I stated my intention to adhere to my usual practice of requiring a pre-motion conference in advance of any formal motion on notice. As it appears that my articulation of that preference has apparently led to some misunderstanding, *see* DE 782 at 1 n.1; DE 783 at 1-2, I now clarify it. After acknowledging that the issues to be litigated would likely not be amenable to informal motion practice by letter, *see* Loc. Civ. R. 37.1 & 37.3, I turned to the pre-motion conference requirement. Although I explained that I did not want to multiply work for the parties' counsel, I did say that "just to make sure we will all be on the same page as to what is being addressed in a motion, I would want to have that kind of conference."

DE 735 at 55. My intention, however inartfully expressed, was to bring the parties together for a conference in advance of committing the resources needed for a full briefing on the merits in an attempt to narrow, or at least clearly identify, the issue to be resolved.

Accordingly, to avoid a further waste of resources, I will deem each of the improvidently submitted motions as a request for a pre-motion conference. Any party that wishes to respond to the request for a pre-motion conference may submit a letter explaining its position by October 24, 2007. As a result of the foregoing, the various applications for extensions of time to respond to the substantive motions, DE 780; DE 784, are moot. Finally, to the extent the parties' respective submissions also seek leave to file materials under seal in connection with the anticipated motion practice, I grant such relief.

SO ORDERED.

Dated: Brooklyn, New York
October 19, 2007

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge